

COMMONWEALTH OF AUSTRALIA

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Family Name	
Given Names	
Student Number	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
Teaching Period	Semester 2 Special/Summer Semester, 2015

FINAL EXAMINATION	DURATION
CML201 – Commercial and Corporate Law for Accountants	
	Reading Time: 20 minutes
	Writing Time: 180 minutes

INSTRUCTIONS TO CANDIDATES

Total marks for this exam: 50 marks.

Identify and discuss all relevant issues and refer to legislation and/or case law (where relevant) to justify your answers to all 4 (four) questions.

EXAM CONDITIONS

You may begin writing from the commencement of the examination session. The reading time indicated above is provided as a guide only.

This is an OPEN BOOK examination

Any non-programmable calculator is permitted

Any handwritten material is permitted

Any hard copy, English dictionary is permitted (annotated allowed)

ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED
Any printed material with the exception of CDU Library books	1 x 20 Page Book

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DOUBLE-SIDED.**

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Problem Solving Questions

Total Marks for this exam: 50 marks

Note: This exam has only one section and requires you to answer all of the 4 (four) following problem questions. You should identify and discuss all relevant issues and refer to legislation and/or case law (where relevant) to justify or support your answers.

You should be aiming to write an answer of **at least 2 to 3 pages** for each question.

Question 1 [10 marks]

Frank is the managing director of Super Athlete Pty Ltd (SA), a profitable company specialising in general and specialist sporting equipment for men. The markets for SA's products are men between the ages of 15 and 40 years.

While at the Ice Hockey rink watching a game between the Adelaide Avalanche and the Sydney Bears, Frank chats to the coach of Adelaide Avalanche, Bob. Bob asks Frank whether his company would be interested in helping him to market a new pair of women's ice skates called "Cheetah". Bob claims that the new ice skates are more protective of women's ankles than the old designs based on men's feet, and this will enhance their athletic performance on the ice.

Frank tells Bob that his company SA would not be interested because it sells men's products only. However, Frank offers to help Bob himself. Bob agrees. Frank and Bob set up a company called Cheetah Plus Pty Ltd (CP) and become its directors and members. Frank is the majority member. The business of CP is an overnight success.

At a board meeting of SA six months later, Frank proposes that SA enter into a long-term contract with CP to purchase Cheetah ice skates for re-sale. The board agrees and as part of the contract Frank negotiates with the board that he will be paid a small commission on each sale because he drew the board's attention to this new product opportunity. SA makes huge profits from selling the Cheetah skates overseas.

SA later learns that Frank is the majority member in CP. The other board members of SA are unsure as to whether Frank is in breach of common law or statutory provisions.

With reference to the *Corporations Act 2001* (Cth) and case law, discuss whether Frank has breached any duties owed to SA? If yes, what remedies can SA seek?

Question 2 is on the next page.

Question 2 [15 marks]

Alex, Ben, Chad and Doug are the directors and equal shareholders of Table Pty Ltd, a company that manufactures and sells modern furniture. Alex, Ben and Chad no longer get along with Doug in either a social or professional capacity; they want him out of the company. They suggest that he resigns as director, and they offer to buy out his shareholding at a price that they have decided is fair. Doug refuses.

Alex hears about a business opportunity from his old school friends, Emma and Frank, who are furniture designers who have links into an overseas market. Emma and Frank want to collaborate with Table Pty Ltd. The opportunity would be one where Emma and Frank design new cutting edge furniture; Table Pty Ltd would then build that furniture and sell it locally and into the overseas market, using Emma and Frank's business contacts.

Alex then discusses this opportunity with Ben and Chad; they think it's a great idea as they have always wanted to crack an international market. They decide that instead of taking the opportunity to the next Board meeting of Table Pty Ltd, they would keep it secret. They decide to form a new company – Chair Pty Ltd – in which they would be the only directors and shareholders. Chair Pty Ltd then enters a contract with Emma and Frank and they start business. This collaboration brings in huge profits for Chair Pty Ltd.

Doug realises that Alex, Ben and Chad are no longer concerned about the business of Table Pty Ltd. Doug finds out about their new company (and the business opportunity with Emma and Frank) and is very upset. He feels that he has been cheated out of this lucrative deal. He shares his concerns at the next Table Pty Ltd board meeting. Alex, Ben and Chad tell Doug that they do not care and that they had to do this because Doug was a horrible person and was difficult to work with. Doug is sick of working with Alex, Ben and Chad and tells them he resigns as Director.

With reference to the Corporations Act 2001 and case law, what actions can Doug take in relation to the above conduct? What remedies are personally available to him?

Question 3 is on the next page.

Question 3 [15 marks]

Fresh Air Co Ltd (Fresh Air) is a company specialising in bottled air fresheners that smell like different Australian environments, such as the Great Barrier Reef or the Snowy Mountains. Their Primary Scent Controller, nicknamed "the sniffer" is Gene Columbus. He is world renowned for his extraordinary ability to distinguish and correctly identify 280 different mountain flower scents.

Fresh Air is seeking to raise funds to expand into the overseas market. They have issued a short form prospectus and referred investors to further material lodged with ASIC. The prospectus is current and approximately \$10 million has already been raised.

In late 2015 Gene suffered a severe allergic reaction to a new scent called "spring time in the mountains" which included some newly discovered mountain flower scents. As a consequence Gene was advised by his doctor to only test those scents he knew he was not allergic to. He informed the board of Fresh Air and they agreed to this arrangement.

In the next board meeting the Chairman of Fresh Air raised his concerns: "I think we may have a problem". He pointed out that in the material lodged with ASIC, Fresh Air had stated under the heading "Contractual Arrangements" that "Gene Columbus ("the sniffer") will oversee the next 2 years of scent development as the Primary Scent Controller". The Chairman explained to the board that Gene had not exactly been contracted for 2 years as he was only on a twelve month retainer to be the Primary Scent Controller. He added that it was understood (based on Gene's handshake) that Gene would renew his contract for the 2 years described in the prospectus. However, he pointed out that investors may not see it this way. The Chairman also raised his concern about Gene's allergies, and whether Fresh Air was required to act on this information.

Taking into consideration the Chairman's concerns, discuss, with reference to the relevant law, whether Fresh Air's prospectus is in breach of Chapter 6D of the *Corporations Act 2001*.

Question 4 is on the **next page**.

Question 4 [10 marks]

Billy holds 20% of the fully-paid shares of GameStation Pty Ltd (GameStation), a company that produces home entertainment systems and that has adopted the replaceable rules.

To finance a luxury holiday in Europe, Billy decides to sell half of his GameStation shares to Tom, a media entrepreneur who also has a significant shareholding in Y-Box Ltd, a rival entertainment company. Tom pays Billy \$23.60 per share (the shares are currently trading at \$22.00). Billy signs a contract of transfer and sends it together with his share certificate to GameStation. In the accompanying letter, Billy asks GameStation to register Tom as the new shareholder of 10% of the GameStation shares and to issue new share certificates for both Billy and Tom.

After sending the letter to GameStation, Billy leaves for Europe. He enjoyed his holiday greatly; until he suffered a heart attack while climbing the stairs of the Eiffel Tower in Paris and died on the way to hospital. Billy's 17 year old son, Jerry, as his sole heir, inherited the remaining 10% shareholding in GameStation.

The board of GameStation refuses to register Tom and Jerry as shareholders without giving a reason. It is rumoured that the board fears a takeover attempt by Tom and doesn't want shareholders like Jerry who have no clue about the home entertainment industry.

Explain to the GameStation board the share transfer requirements in the *Corporations Act 2001*, and in particular whether their refusal to register both Tom and Jerry as shareholders can be challenged?